

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 918 OF 2003
IN
SECOND APPEAL NO. 620 OF 2003

Office Notes, Office Memoranda
of of Coram, appearances, Court's
orders and Registrar's orders : Court's or Judge's orders

Mr. G.S. Godbole for the applicant.

None for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 23RD SEPT., 2005

P.C.:

1. Heard learned counsel for the applicant. None for the respondents though served.

2. This is an application for stay of the order passed by the lower appellate Court in Civil Appeal No. 491 of 1991.

3. The present applicant was the defendant in Civil Misc. Appeal No. 182 of 1999 filed by one Vimal and her children against her. Said Vimalabai and present applicant Kaveri have claimed that they are legally wedded wives of deceased Dnyandev Boarade and present respondent filed the application for heirship certificate in her

name alongwith her children with declaration that they were legal heirs of deceased Dnyandev Borade. The application was contested by the present applicant Kaveri on the ground that she was the only legally wedded wife of the deceased. Deceased Dnyandev Borade was employed with the State Government. Family pension order was passed by the concerned authority in favour of the present applicant Kaveri granting her the pension amount of Rs.1800/- and she used to get the same. However, in view of the concurrent findings recorded by both the Courts below, said payment is stopped and hence the present application for stay of the said order.

4. It is to be noted that though the respondents are served, they are not present before the Court and, therefore, this Court is not in a position to hear them. However, as can be seen from the record, that the respondent Vimalabai is having three adult sons and one married daughter. It is submitted on behalf of the present applicant Kaveri that all the three sons of Vimalabai are well employed and earning members of the family. As against that, applicant Kaveri has no means of

survival nor there is anybody to look after her and, therefore, she is in need of pension amount.

In view of these factual matrix, I am of the view that the ends of justice would be served if the order of the lower appellate Court is stayed and pension amount is allowed to be resumed on certain conditions.

Hence, the application is allowed in terms of prayer clause (a) with condition that, when the pension payment to Kaveri under the pension scheme passed by the competent authority is resumed, the entire amount shall be deposited in the Trial Court and 1/2 amount thereof only shall be paid to the present applicant Kaveri. This arrangement shall be in vogue pending the appeal. Respondent Vimlabai would be also be at liberty to make an application to this Court if she wants the other half of pension amount to be withdrawn.

The Trial Court shall ensure proper compliance of this order.

With these directions, the application

stands disposed of with no order as to
costs.

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